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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,430	07/09/2003	Michael Tod Morman	13,857.1	9183

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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,430

Applicant(s)

MORMAN ET AL.

Examiner

Sam Chuan C. Yao

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-31 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-31 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24-31 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quantrille et al (US 5,804,286) in view of Kobylivker et al (US 6,072,005). The discussion of the Quantrille et al patent set forth in prior office action dated 07-12-05 numbered paragraph 7 is substantially incorporated herein.

While it is acknowledged that Quantrille et al discloses “[i]n assembling the composite fabric 10, layers 11 and 12 are provided in an unstretched state from individual supply rolls.” (col. 9 lines 31-38), since: a) an extensible composite fabric of Quantrille et al is used as an “impermeable outer component of a disposal diaper” (col. 8 lines 28-36); and, b) it is well known in the art to stretch a modified polyolefin film containing inorganic fillers “... to a stretched length, where the film 10 becomes microporous and breathable ...” with a WVTR of at least 2000 g/m²/24hrs, before the film is laminated to a fibrous web to form a finished laminate, which has an WVTR of at least 2000 g/m²/24hrs and “provide[s] excellent moisture breathability and excellent barrier to penetration by liquids”, and wherein the laminate being useable as

"diaper outercovers" as exemplified in the teachings of Kobylivker et al (abstract; col. 1 lines 6-10; col. 1 line 48 to col. 2 line 44; col. 7 lines 27 to col. 8 line 30; claims 31-32; figures 1-5), it would have been obvious in the art to partially stretch a non-elastic polyolefin film containing inorganic fillers before it is laminated to an inelastic extensible fibrous web in order to form a laminate which is breathable and yet impermeable to liquid thereby enhancing the comfort of each wearer to a finished diaper.

As for the added limitation of "... *said laminate is extensible and retractable in said dimension perpendicular to said first dimension*", this limitation is reasonably expected to flow naturally to a resultant composite in a modified process of Quantrille et al, because "*striated rugosities*" along a 1st dimension of the composite are intrinsically formed.

3. Claims 24-31 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al (US 5,846,232) in view of Quantrille et al (US 5,804,286) and Kobylivker et al (US 6,072,005). The discussion of the Serbiak et al patent set forth in prior office action dated 07-12-05 numbered paragraph 8 is substantially incorporated herein.

While layers in a laminate of Serbiak et al are separately, but concurrently stretched (i.e. necked), Serbiak et al does not teach necking a laminate.

However, such would have been obvious in the art, because: a) Serbiak et al is drawn to making an extensible laminated cover; and, b) it is old in the art to stretch (i.e. neck) a laminate comprising a non-elastic neckable web and a non-elastic film to form an extensible laminated composite. Absent any

showing of unexpected benefit, a preference on whether to separately, but concurrently stretch layers of a laminate or to stretch the laminate is taken to be well within the purview of choice in the art.

Serbiak et al does not teach partially stretching a non-elastic film and laminating the non-elastic film in a partially stretched state to a non-elastic neckable material. However, such would have been obvious in the art, because: since: a) an extensible outer layer of Serbiak et al is used as a component of an absorbent article such as a diaper (abstract); and, b) it is well known in the art to stretch a modified polyolefin film containing fillers "... to a stretched length, where the film 10 becomes microporous and breathable ..." with a WVTR of at least 2000 g/m²/24hrs before the film is laminated to a fibrous web, to form a finished laminate, which has an WVTR of at least 2000 g/m²/24hrs and "provide[s] excellent moisture breathability and excellent barrier to penetration by liquids", and wherein the laminate being useable as "diaper outercovers" as exemplified in the teachings of Kobylivker et al (abstract; col. 1 lines 6-10; col. 1 line 48 to col. 2 line 44; col. 7 lines 27 to col. 8 line 30; claims 31-32; figures 1-5). It directly follows that, "*striated rugosities*" along a 1st dimension of the composite must naturally be formed. Hence, the added limitation of "... said laminate is extensible and retractable in said dimension perpendicular to said first dimension" must also naturally flow from a modified process of Serbiak et al.

Response to Arguments

4. Applicant's arguments filed on 06-20-05 have been fully considered but they are not persuasive.

On page 6, Counsel argues that WO '216 (i.e. Quantrille et al) does not teach prestretching a non-elastic film layer before it is bonded to a non-elastic neckable material. Moreover, Counsel further argues that Antoon, Jr. et al can't render what is deficient in Quantrille et al obvious, since WO '216 *"specifically states that, in assembling the composite fabric, the non-woven layer and the second layer are provided in an unstretched state."* While it is true that, WO '216 *"specifically states that, in assembling the composite fabric, the non-woven layer and the second layer are provided in an unstretched state."*, it is not essential in the process of WO '216 to ensure that in laminating these two layers, the layers must be in an unstretched state. In other words, there is nothing in the disclosure of Quantrille et al, which would reasonably suggest to one in the art that if a non-elastic film layer and a non-elastic fiber web are laminated while the non-elastic film is in a state of stretched length, the process of Quantrille et al would become inoperational (i.e. fall apart). Equally important, one in the art would have considered the tradeoff between potential, **if any**, detrimental effect of laminating a non-elastic film in a stretched length condition and a non-elastic fiber web, and benefit of forming a breathable and yet liquid impermeable laminated composite.

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As for Counsel's arguments on pages 7-8 regarding Serbiak et al, it is well taken. However, such are moot in light of a new ground of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

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09-27-05